

## § 1941.2

## 7 CFR Ch. XVIII (1–1–05 Edition)

or its successor agency under Public Law 103–354 employee. See exhibit A of subpart A of part 1943 of this chapter for making OL loans to entrymen on unpatented public lands. Agency or its successor agency under Public Law 103–354 forms are available in any Agency or its successor agency under Public Law 103–354 office.

[53 FR 35684, Sept. 14, 1988, as amended at 58 FR 226, Jan. 5, 1993; 58 FR 48282, Sept. 15, 1993; 61 FR 35925, July 9, 1996; 68 FR 7696, Feb. 18, 2003]

### § 1941.2 Objectives.

The basic objective of the OL loans program is to provide credit and management assistance to farmers and ranchers to become operators of family-sized farms or continue such operations when credit is not available elsewhere. FmHA or its successor agency under Public Law 103–354 assistance enables family-farm operators to use their land, labor and other resources and to improve their living and financial conditions so that they can obtain credit elsewhere. The objective of the OL loan program for rural youth is to provide credit for rural youths to establish and operate income-producing projects of modest size in connection with their participation in 4-H clubs, Future Farmers of America, and similar organizations.

### § 1941.3 Management assistance.

As provided in subpart B of part 1924 of this chapter, management assistance will be provided to all borrowers to the extent necessary to achieve the objectives of the loan.

### § 1941.4 Definitions.

As used in this subpart, the following definitions apply:

*Additional security.* Any security beyond that which is required to adequately secure the loan.

*Agency.* The Farm Service Agency, its county and State committees and their personnel, and any successor agency.

*Approval official.* A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitation contained in tables avail-

able in any FmHA or its successor agency under Public Law 103–354 office.

*Beginning farmer or rancher.* A beginning farmer or rancher is an individual or entity who:

(a) Meets the loan eligibility requirements for OL loan assistance in accordance with § 1941.12 of this subpart.

(b) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to all members of an entity.

(c) Will materially and substantially participate in the operation of the farm or ranch.

(1) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(2) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

(d) Agrees to participate in any loan assessment, borrower training, and financial management programs required by FmHA or its successor agency under Public Law 103–354 regulations.

(e) Except for OL loan purposes, does not real farm or ranch property or who, directly or through interests in family farm entities, owns real farm or ranch property, the aggregate acreage of which does not exceed 30 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the

county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census. State Directors will publish State supplements containing the average farm or ranch acreage by county.

(f) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming or ranching on a viable scale.

(g) In the case of an entity:

(1) All the members are related by blood or marriage.

(2) All the stockholders in a corporation are eligible beginning farmers or ranchers.

**Borrower.** An individual or entity which has outstanding obligations to the FmHA or its successor agency under Public Law 103-354 under any Farmer Programs loan(s), without regard to whether the loan has been accelerated. A borrower includes all parties liable for the FmHA or its successor agency under Public Law 103-354 debt, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all FmHA or its successor agency under Public Law 103-354 debt.

**Cooperative.** An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm.

**Corporation.** For the purpose of this regulation, a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate a farm.

**Cosigner.** A party who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the terms of the note. In the case of an entity applicant, the cosigner cannot be a member, partner, joint operator, or stockholder of the entity.

**Entity.** Cooperative, corporation, partnership, joint operation, trust, or limited liability company.

**Family farm.** A farm which:

(a) Produces agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.

(b) Provides enough agricultural income by itself, including rented land, or together with any other dependable income, to enable the borrower to:

(1) Pay necessary family and operating expenses;

(2) Maintain essential chattel and real property; and

(3) Pay debts.

(c) Is managed by:

(1) The borrower when a loan is made to an individual.

(2) The members responsible for operating the farm when a loan is made to an entity.

(d) Has a substantial amount of the labor requirements for the farm enterprise provided by:

(1) The borrower and family members for a loan made to an individual.

(2) The members responsible for operating the farm, along with the families of these individuals, for a loan made to an entity.

(e) May use a reasonable amount of full-time hired labor and seasonal labor during peakload periods.

**Farm.** A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

**Feasible plan.** A feasible plan is a plan based upon the applicant/borrower's records that show the farming operation's actual production and expenses. These records will be used along with realistic anticipated prices, including farm program payments when available, to determine that the income from the farm operation, along with any other reliable off farm income, will

provide the income necessary for an applicant/borrower to at least be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm budget period;

(b) Meet necessary payments on all debts; and

(c) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of an entity borrower which is in accordance with the essential family needs. Family members include the individual borrower of farm operator in the case of an entity, and the immediate members of the family who reside in the same household.

*Financially viable operation.* A financially viable operation is one which, with FmHA or its successor agency under Public Law 103-354 assistance, is projected to improve its financial condition over a period of time to the point that the operator can obtain commercial credit without further FmHA or its successor agency under Public Law 103-354 direct or guaranteed assistance. Such an operation must generate sufficient income to: Meet annual operating expenses and debt payments as they become due, meet basic family living expenses to the extent they are not met by dependable non-farm income, provide for replacement of capital items, and provide for long-term financial growth. This definition only applies when considering a term limit waiver under § 1941.12.

*Fish.* Any aquatic gilled animal commonly known as "fish," as well as mollusks or crustaceans (or other invertebrates) produced under controlled conditions (that is, feeding, tending, harvesting, and such other activities as are necessary to properly raise and market the products) in ponds, lakes, streams, or similar holding areas.

*Joint operation.* Individuals who have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

*Limited resources applicant.* An applicant who is a farmer or rancher and is an operator of a small or family farm (a small farm is a marginal family

farm), including a new operator, with a low income who demonstrates a need to maximize farm or ranch income. A limited resource applicant must meet the eligibility requirements for a farm ownership or operating loan but, due to low income, cannot pay the regular interest rate on such loans. Due to the complex nature of the problems facing this applicant, special help will be needed and more supervisory assistance will be required to assure reasonable prospects for success. The applicant may face such problems as underdeveloped managerial ability, limited education, low-producing farm due to lack of development or improved production practices and other related factors. The applicant will not have nor expect to obtain, without the special help and a low-interest loan, the income needed to have a reasonable standard of living when compared to other residents of the community.

*Majority interest.* Any individual or combination of individuals owning more than a 50 percent interest in a co-operative, corporation, joint operation, or partnership.

*Nonfarm enterprise.* Any nonfarm business enterprise, including recreation, which is closely associated with the farm operation and located on or adjacent to the farm and provides income to supplement farm income. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs, and horses for nonfarm purposes, welding shops, road stands, boarding horses and riding stables.

*Partnership.* An entity consisting of individuals who have agreed to operate a farm. This entity must be recognized as a partnership by the laws of the State(s) in which the partnership will operate a farm and must be authorized to own both real and personal property and to incur debt in its own name.

*Presidentially-designated emergency.* A major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

*Primary security.* Any real estate and/or chattel security which is required to adequately secure the loan. This is not to be confused with "basic security,"

as defined in §1962.4 of subpart A of part 1962 of this chapter.

*Related by blood or marriage.* As used in this subpart, individuals who are connected to one another as husband, wife, parent, child, brother, or sister.

*Rural youth.* A person who has reached the age of 10 but has not reached the age of 21 and does not reside in any city or town with a population of more than 10,000 inhabitants.

*Rural youth projects.* Modest projects initiated, developed, and carried out by rural youths participating in 4-H or Future Farmers of America, or similar organizations. Projects must produce enough income to meet expenses and debt repayment.

*Security.* Property of any kind subject to a real or personal property lien. Any references to collateral or security property shall be considered a reference to the term "security."

*State or United States.* The United States itself, any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

[53 FR 35684, Sept. 14, 1988, as amended at 58 FR 26680, May 5, 1993; 58 FR 48283, Sept. 15, 1993; 61 FR 35925, July 9, 1996; 62 FR 9353, Mar. 3, 1997; 68 FR 7696, Feb. 18, 2003; 69 FR 5262, Feb. 4, 2004]

#### § 1941.5 [Reserved]

#### § 1941.6 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall verify and document, that adequate credit is not available, with or without a guarantee or subordination, to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) If the County Supervisor receives letters or other written evidence from a lender(s) indicating that the applicant is unable to obtain satisfactory credit, this will be included in the loan docket.

(b) If the applicant cannot qualify for the needed credit from the lender(s) contacted, but one or more of them has indicated they would provide credit with an FmHA or its successor agency under Public Law 103-354 guarantee, or the County Supervisor determines that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s) so that a guaranteed OL request can be processed by the lender(s) for consideration by FmHA or its successor agency under Public Law 103-354.

(c) Property and interest in property owned and income received by an individual applicant, or an entity applicant and all of its members as individuals will be considered and used by an applicant in obtaining credit from other sources.

(d) Applicants and borrowers will be encouraged to supplement operating loans with credit from other credit sources to the extent economically feasible and in accordance with sound financial management practices.

[43 FR 55883, Nov. 29, 1978, as amended at 68 FR 7697, Feb. 18, 2003]

#### §§ 1941.7-1941.10 [Reserved]

#### § 1941.11 Applications.

Applications will be received and processed as provided in subpart A of part 1910 of this chapter, with consideration given to the requirements in exhibit M of subpart G of part 1940 of this chapter.

#### § 1941.12 Eligibility requirements.

In accordance with the Food Security Act of 1985 (Pub. L. 99-198), after December 23, 1985, if an individual or any member of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR part 1308, which is exhibit C of this subpart and is available in any FmHA or its successor agency under Public Law 103-354 office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member of the entity was convicted and the four succeeding crop years. Applicants will attest on